

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BARBARA RIVERO, JAMES WICE, TANJA
MILOJEVIC, CORY KADLIK, BOSTON CENTER
FOR INDEPENDENT LIVING, and BAY STATE
COUNCIL OF THE BLIND,

Plaintiffs,

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity
as Secretary of the Commonwealth of Massachusetts, and
the DEPARTMENT OF THE STATE SECRETARY,

Defendants.

C.A. No. 1:20-cv-11808

PROPOSED JUDGMENT

This matter came before the Court on the Complaint and Motion for Preliminary Injunction filed by Barbara Rivero, et al. (“Plaintiffs”) against William Francis Galvin, in his Official Capacity as Secretary of the Commonwealth of Massachusetts (the “Secretary”), dated October 2, 2020.

For good cause stated in the Complaint and Motion for Preliminary Injunction, after notice and a hearing as appropriate under the circumstances, by agreement of all parties, and because there is a pandemic in the Commonwealth that has led to social distancing, the Governor declaring a State of Emergency, and the Legislature expanding options for voting in the November 3, 2020 election, the Court hereby enters judgment in the above-captioned matter declaring as follows:

1. This Agreed Judgment applies only to Massachusetts voters who are blind or have vision impairments, mobility/dexterity disabilities, or other disabilities that make it difficult or impossible for them to effectively access a paper vote by mail ballot because they cannot independently read, write, hold, or physically manipulate standard print materials and seek to participate in the Accessible Vote by Mail (“AVBM”) program available to voters with disabilities for the November 3, 2020 general election. In all other respects and for all other voters, the provisions of Chapter 115 of the Acts of 2020 shall apply.

2. A registered voter seeking a disability-based accommodation to vote using the accessible electronic ballot made available through the AVBM program may seek an accommodation from the Secretary to vote as follows:

- (a) The voter shall submit a request for an accommodation to the Accessible Vote by Mail Coordinator in the Secretary's Office ("AVBM Coordinator") via email at AVBM@sec.state.ma.us or by phone at 617-727-2828. The request shall clearly state that the voter is seeking an accommodation by reason of a disability. The request for an accommodation shall include the voter's first name, last name, date of birth, address at which the voter is registered to vote, mailing address, and an email address and/or telephone number. Whether the accommodation request is submitted by telephone or by email, voters will be required to provide the same information to enable the AVBM Coordinator to confirm the voter's identity. If the voter is unwilling or unable to provide an email address, the voter may only return their ballot by mail and not electronically.
- (b) The voter shall also submit to the AVBM Coordinator by email a completed and signed Vote by Mail Application, which is available electronically on the Secretary's website. An acceptable signature for the Application shall be one of the following: (i) a handwritten signature; (ii) a hand-drawn electronic signature; or (iii) the voter's typewritten name, if and only if accompanied by a statement by the voter in the email to the AVBM Coordinator that the voter is disabled and unable to independently insert a hand-drawn signature into the Application.
- (c) A voter wishing to return a completed ballot by email pursuant to the provisions of Paragraph 5(b) must provide the AVBM Coordinator with a valid email address from which they will return the completed ballot.

3. If the AVBM Coordinator receives from the voter an accommodation request and Vote by Mail Application as set forth in Paragraph 2, and if the AVBM Coordinator can verify that the voter is registered at the address provided in the voter's application and that the materials required by Paragraph 2 have been completed by the voter, or if the voter has already been approved to participate in the AVBM program for the general election, then the Secretary shall:

- (a) Add the voter to the AVBM program voting system operated by VotingWorks so that the voter can obtain an accessible electronic ballot and voter instructions through this system. The AVBM Coordinator will also provide the voter with an access PIN in a separate email.
- (b) Provide information to the voter by telephone or by email regarding the options for returning a completed accessible electronic ballot per Paragraph 5 of this Agreed Judgment and to permit the voter to ascertain both the mailing address of the voter's local election official where the voter's completed ballot must be sent if being mailed and the email address to return the voter's completed ballot in order to be officially cast.
- (c) Provide the voter access both by email and through the VotingWorks system to an accessible affidavit document in which the voter is asked to affirm under the penalty of perjury the following components:

- (1) A statement that the voter is a registered voter in Massachusetts at the address provided in their application, that the voter will not cast a ballot in any other city or town or voting location and that the information provided in their application is true;
 - (2) An acknowledgement that the voter understands that by submitting their completed ballot electronically, the voter is waiving the right to cast a secret ballot; such acknowledgement must accompany a ballot in order to be officially cast if the voter chooses to submit the ballot via email pursuant to the provisions of Paragraph 5(b) of this Agreed Judgment; and
 - (3) A statement affirming that if the voter has included a typewritten signature, the voter is disabled and unable to independently insert a hand-drawn signature into the document;
 - (4) An area in which the voter must insert one of the following: (i) a handwritten signature; (ii) a hand-drawn electronic signature; or (iii) a typewritten signature in accordance with Paragraph 3(c)(3) above.
- (d) Notify the voter if the voter is required to provide proper personal identification pursuant to federal or state law in order to cast a ballot (e.g., per the Help America Vote Act (HAVA) identification requirements), and provide information regarding the acceptable forms of identification.
 - (e) Notify the voter's local election officials that the voter has requested and qualified for access to the AVBM program and:
 - (1) Direct the voter's local election officials to send by first-class mail to the voter: an inner envelope where the ballot is placed after voting which contains an affidavit of compliance to be filled out and signed by the voter that has a hole punched next to where the voter must sign, and an outer envelope that is pre-addressed to the local election official with postage guaranteed. The local election officials shall not send a ballot or voter instructions to the voter. The Secretary is otherwise not responsible for ensuring that these voting supplies reach the voter before November 3, 2020; and
 - (2) Notify the voter's local election official that the voter may return a completed ballot electronically and the process by which it would be received.
4. If the AVBM Coordinator receives from the voter an accommodation request and Vote by Mail Application as set forth in Paragraph 2, and if the AVBM Coordinator is unable to verify that the voter is registered at the address provided in the voter's application and/or that the materials required by Paragraph 2 are incomplete, the Secretary shall notify the voter of any deficiencies and provide the voter with information regarding what is necessary to complete the

application and accommodation process. The AVBM Coordinator shall forthwith communicate this information to the voter via email and shall not be responsible for further communication.

5. The Secretary shall accept requests for accommodations and applications under this Agreed Judgment relating to the November 3, 2020 general election pursuant to Paragraph 2 until 5:00 p.m. on October 28, 2020. In order to qualify to use the AVBM system, the voter must submit a complete and valid application and request for accommodation to the AVBM Coordinator no later than 5:00 p.m. on October 28, 2020.

6. The voter is solely responsible for ensuring that all materials are properly completed and returned in compliance with the Agreed Judgment and other applicable general laws. For the ballot of a voter voting pursuant to this Agreed Judgment to be counted, the voter must complete either of the following subsections:

- (a) If the voter is returning an accessible electronic ballot by mail, the following materials must be postmarked no later than November 3, 2020 and received by the voter's local election official no later 5:00 p.m. on November 6, 2020 to be eligible to be counted:
 - (1) The completed and printed ballot which must be inserted into the inner secrecy envelope (EV7); and
 - (2) The signed inner envelope (EV7) bearing the affidavit of compliance with the name of the voter or the signed electronic affidavit of compliance provided to the voter per Section 3(a)(3), which must be placed with the inner envelope (EV7), but not inside in the inner envelope, both of which must be included inside the outer mailing envelope (AV8); if the inner envelope is not signed and no signed affidavit is included, the ballot will be rejected; or
- (b) If the voter is returning a ballot electronically, the voter must email the AVBM Coordinator at AVBM@sec.state.ma.us from the same email address used to request the AVBM ballot and attach the following documents no later than 8:00 p.m. on November 3, 2020:
 - (1) The completed accessible electronic ballot;
 - (2) The signed document described in Paragraph 3(c) containing the affidavit of compliance bearing the name of the voter the acknowledgement of waiver of a secret ballot, and the statement required by the usage of a typewritten signature. In addition, a voter returning a ballot electronically must use the email address provided to the AVBM Coordinator pursuant to Paragraph 2(c) to send the completed ballot back to the AVBM Coordinator.

7. If a voter is required to provide proper personal identification pursuant to federal or state law in order to cast a ballot, the voter must satisfy this requirement by providing acceptable identification to the AVBM Coordinator, as described by the notice provided by the

AVBM Coordinator per Paragraph 3(d). Acceptable identification must include the voter's name and the address at which the voter is registered to vote. Acceptable identification may be returned to the AVBM Coordinator in the manner described in Paragraph 6(a) or Paragraph 6(b). If the voter fails to provide acceptable identification, their ballot will not be counted and instead will be treated as a provisional ballot in accordance with law.

8. Plaintiffs shall assist the Secretary with the creation of accessible instructions and the accessible affidavit document described in paragraph 3(c).

9. The Secretary shall promptly display on the Election Division's website information about how a voter may request an accommodation pursuant to this order for the November 3, 2020 general election. The Secretary shall also provide information relative to this Agreed Judgment to local election officials.

SO ORDERED.

Dated: October __, 2020

By the Court,
